

to restore the Property or portion thereof so injured.

B. Grantor's failure to cure. If Grantor fails to cure the violation within 30 days after receipt of notice thereof from Donee, or, under circumstances in which the violation cannot reasonably be cured within a 30-day period, fails to begin curing the violation within the 30-day period, or fails to continue diligently to cure such violation until finally cured, Donee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction, to recover any damage to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of the Conservation Values protected by this Easement, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Donee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Donee, in its sole discretion, determines that circumstances require immediate action to prevent threatened violations of the terms of this Easement, Donee may petition a court of competent jurisdiction for appropriate injunctive relief.

C. Immediate action required. If Donee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Donee may pursue its remedies under this Article without prior notice to Grantor or without waiting for the period provided for cure to expire.

D. Nature of remedy. Donee's rights under this Article IX apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Donee's remedies at law for any violation of the terms of this Easement are inadequate and that Donee shall be entitled to the injunctive relief described in this Article IX both prohibitive and mandatory, in addition to such other relief to which Donee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Donee's remedies described in this Article IX shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

E. Costs of enforcement. In the event Grantor or Donee finds it necessary to bring an action at law or other proceeding against the other party to enforce or interpret any of the terms, covenants, or conditions of this Easement, the prevailing party in any such action or proceeding shall be paid all costs and reasonable attorneys' and consultants' fees by the other party and all such costs and attorneys' and consultants' fees shall be included in any judgment secured by such prevailing party. In the event that Donee secures redress for an Easement violation by Grantor without initiating or completing a judicial proceeding, the costs of such restoration and Donee's reasonable expenses shall be borne by Grantor.

F. Donee's discretion. Enforcement of the terms of this Easement is at the discretion of the Donee, and any forbearance to exercise any rights under this Easement in the event of any breach of its terms by Grantor may not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Easement or of any of the rights of the Donee under this Easement. No delay or omission by the Donee in the exercise of any right or remedy upon any breach by Grantor may impair such right or remedy or be construed as a waiver. Notwithstanding the foregoing, nothing in this Easement shall be interpreted to waive or toll any applicable statutes of limitation.

G. Waiver of certain defenses. Grantor acknowledges that he has carefully reviewed this Deed of Conservation Easement and has had the opportunity to consult with and be advised by counsel of its terms and requirements. In full knowledge of the provisions of this Deed of Conservation Easement,

Grantor hereby waives any claim or defense he may have against Donee or its successors in interest under or pertaining to this Deed of Conservation Easement based upon waiver or prescription.

H. Acts beyond Grantor's control. Nothing contained in this Easement may be construed to entitle the Donee to bring any action against Grantor for any injury or change in the Property resulting from causes beyond the Grantor's control, including, without limitation, acts of trespassers, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, mitigate, or abate significant damage to the Property resulting from such causes. Acts beyond Grantor's control shall also include acts by members of the general public entering the Property pursuant to Article X of this Easement.

I. Compliance Certificates. Upon request by Grantor, Donee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies, to the best of Donee's knowledge, Grantor's compliance or lack thereof with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as requested by Grantor. Such certification shall be limited to the condition of the Property as of Donee's most recent inspection. If Grantor requests more current documentation, Donee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request and payment therefore.

ARTICLE X. DONEE'S ACCESS FOR THE PUBLIC

If Grantor is not allowing substantial and regular use of the Property by the general public, pursuant to Article VI above, Donee may, but is not obligated to, provide the general public with access to the Property as set forth in this Article X.

A. Public Access. Access by the general public pursuant to this Article X to any portion of the Property shall be only through prior, special arrangement with the Grantor and Donee, and any persons or groups allowed access must agree to abide by any reasonable restrictions on access by Grantor and Donee. Such public access shall not unreasonably interfere with the Conservation Values or Grantor's quiet enjoyment of the Property. Such special arrangements shall be (a) coordinated by Donee and subject to Donee's supervision, (b) approved by Grantor, which approval shall not be unreasonably withheld, and (c) subject to the further requirements of this Article X. Access pursuant to this Article X shall not include access to the residential buildings described in Article VI, Paragraph A above or to any other building not expressly designated for public use.

B. Access Plan. As a precondition to public access under Paragraph A above, Donee shall prepare a written plan for public access, as further provided in this Paragraph ("Access Plan"). The Access Plan shall:

1. Include provisions to help prevent any unreasonable interference with the Grantor's quiet enjoyment of the Property;
2. Include provisions to help minimize the risk of damage to the Property, including, but not limited to, the botanical garden;
3. Include provisions to help minimize the risk of injury to people and damage to personal property; and
4. Be approved in writing by Grantor, which approval shall not be unreasonably withheld.

C. Insurance. As a precondition to public access under Paragraph A above, Donee shall obtain comprehensive general liability insurance coverage for such access, as further provided in this Paragraph. The insurance shall:

1. Include Grantor's interest, name Grantor as an additional insured, provide for at least thirty (30) days notice to Grantor before cancellation, and provide that the act or omission of one insured will not invalidate the policy as to the other insured. Donee shall continuously maintain such coverage; the public access authorized under Article X of this Easement shall be suspended during any period that such coverage is not in force.
2. Insure Grantor and Donee against all claims, demands, and actions for personal injury to or death of any one person, in an amount not less than \$5,000,000, for personal injury to or death occurring in any one accident, and for damage to property in an amount of not less than \$250,000, made by or on behalf of any person, firm, or corporation, arising from, related to, or in any way connected with the access to the Property by the general public pursuant to Article X of this Easement. The policy or, at Grantor's option, duly executed certificates thereof, shall, at Grantor's request, be deposited with Grantor.

ARTICLE XI. COSTS, LIABILITIES, INSURANCE, TAXES, INDEMNIFICATION

A. Liabilities and Insurance. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation and maintenance of the Property, including the maintenance of adequate liability coverage, except as expressly provided otherwise in this Easement. Grantor shall keep the Property free of any material liens arising out of any work performed for or material furnished to Grantor, provided that the Property shall be deemed to be free of such liens if Grantor is diligently challenging the application of such liens to the Property.

B. Taxes and other costs. Grantor will pay all taxes, fees and charges assessed against the Property by governmental authority as they become due, including taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Donee with satisfactory evidence of payment upon request. To preserve its rights under this Easement, the Donee may, but is in no event obligated to make payment of any taxes upon five days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation to the Donee created by such payment will bear interest until paid by Grantor at the same rate imposed by the relevant governmental authority for the late payment of the tax so paid by the Donee.

C. Indemnification. Grantor will hold harmless, indemnify, and defend the Donee, its members, officers, directors, employees, agents, and contractors, and the heirs, personal representatives, successors, and assigns of each of them (collectively referred to as "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless attributable to the negligence of any of the Indemnified Parties or is a consequence of any public use of the Property pursuant to Donee's rights under Article X of this Easement; (2) violations or alleged violations of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, unless such violations or alleged obligations are due to the acts or omissions of any of the Indemnified Parties or are a consequence of any public use of the Property pursuant to Donee's rights under Article X of this

Easement; and (3) the obligations specified in this Article.

D. Donee's Indemnification. Donee shall hold harmless, indemnify, and defend Grantor and Grantor's heirs, personal representatives, successors, and assigns (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property that is a consequence of Donee's actions or omissions or the actions or omissions of Donee's members, directors, officers, employees, agents, or contractors on or about the Property, or that is a consequence of any public use of the Property pursuant to Donee's rights under Article X of this Easement.

ARTICLE XII. EXTINGUISHMENT OR TRANSFER OF EASEMENT

A. Extinguishment. If circumstances arise in the future which make it impossible to accomplish the Purpose of this Easement, this Easement may only be extinguished or terminated, in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of proceeds to which Grantor and Donee shall be entitled, after satisfaction of prior claims, if any, from the sale, exchange or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at such time, in accordance with the following Paragraph B of this Article. Donee shall use all such proceeds in a manner consistent with the Purpose of this Easement.

B. Valuation. This Easement constitutes a real property interest immediately vested in Donee which, for purposes of the immediately preceding Paragraph A of this Article, the parties agree to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in the value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reasons of this grant, pursuant to IRC § 170(h). For purposes of this Paragraph, the ratio at the time of this grant of the value of the Easement to the value of the Property unencumbered by this Easement shall remain constant.

C. Condemnation. If the Easement is taken, in whole or in part, by the exercise of the power of eminent domain, Donee shall be entitled to compensation in accordance with applicable law.

D. Subsequent transfers.

1. By Donee. This Easement is transferable by Donee only under the following circumstances: (a) if the Donee determines that is unable to fulfill its rights and obligations hereunder; (b) if Grantor divests its interest in all or any portion of the Property to an entity other than the Kruckeberg Botanic Garden Foundation, a Washington nonprofit corporation recognized as a public charity under IRC § 501(c)(3); or (c) if Donee determines, in consultation with the Cascade Land Conservancy, a Washington nonprofit corporation recognized as a public charity under IRC § 501(c)(3), that Grantor has ceased to maintain the botanical collection contained within the Property in accordance with professional horticultural standards for such collections. In such an event, the Donee may assign its rights and obligations hereunder to the Cascade Land Conservancy, who by acknowledgment contained

herein agrees to assume such assignment in such an event, or other organization that is a qualified organization at the time of transfer under IRC § 170(h), and authorized to acquire and hold conservation easements under RCW §§ 64.04.130 and 84.34.250. As a condition of such transfer, the Donee will require that the Purpose of this Easement continue to be carried out and the Donee shall also transfer to such assignee the then current balance of any stewardship-related funds for the Property that Grantor has donated, or caused to be donated, to Donee. Donee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment.

If the Donee ceases to exist or to be a qualified organization under IRC § 170(h), or to be authorized to acquire and hold conservation easements under RCW §§ 64.04.130 and 84.34.250, and a prior assignment is not made pursuant to this Subparagraph 1, then the rights and obligations of the Donee under this Easement will immediately vest in the Cascade Land Conservancy, Washington Chapter of the Nature Conservancy, City of Shoreline, King County, Bellevue Botanic Garden, Lakewold Garden, Garden Conservancy, or another nonprofit or governmental entity, in the order provided (the "Successor Donee"). If the Successor Donee is no longer in existence at the time the rights and obligations under this Easement would otherwise vest in it, or if the Successor Donee is not authorized to acquire and hold conservation easements as provided for an assignment pursuant to this Subparagraph 1, or if the Successor Donee refuses such rights and obligations, then the rights and obligations under this Easement will vest in such organization as a court of competent jurisdiction may direct pursuant to applicable Washington law, giving due regard to the requirements regarding an assignment pursuant to this Subparagraph 1.

2. By Grantor. Grantor agrees to incorporate the terms of this Easement in any deed or other instrument which divests Grantor of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to the Donee no less than 45 days prior to any transfer of any interest in the Property. Such Notice shall include the name, address and telephone number of the prospective transferee or his or her representative. The failure of Grantor to perform any act required by this Subparagraph 2 will not impair the validity of this Easement or limit its enforceability to any degree whatsoever.

ARTICLE XIII. AMENDMENT

If circumstances arise which make it appropriate to modify or amend this Easement, Grantor and the Donee are free to jointly amend this Easement; PROVIDED, HOWEVER, that no amendment shall be allowed that will affect the qualification of this Easement or the status of the Donee under any applicable laws, including RCW 64.04.130, Chapter 84.34 RCW, or IRS § 170(h) (or any successor provisions then applicable), and any amendment shall be consistent with the Purpose of this Easement and may not affect its perpetual duration. Any such amendment shall be recorded in the Official Records of King County, Washington, and any other jurisdiction in which such recording is required.

ARTICLE XIV. MISCELLANEOUS

A. Recording. The Donee shall record this instrument in timely fashion in the Official Records of King County, Washington and in any other appropriate jurisdictions, and the Donee may re-record this instrument as often as may be necessary to preserve its rights in this Easement.

B. General provisions.

1. The interpretation and performance of this Easement is governed by the laws of the State of Washington.
2. Any general rule of construction to the contrary notwithstanding, this Easement is to be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of the Washington statutes authorizing conservation easements. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the Purpose of this Easement which would render the provision valid is to be favored over any interpretation which would render such provision invalid.
3. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it has not been found to be invalid, as the case may be, shall not be affected thereby.
4. This instrument sets forth the entire agreement of the parties hereto with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Article XIII herein.
5. Nothing contained in this instrument is to result in a forfeiture or reversion of Grantor's title in any respect.
6. All obligations imposed upon Grantor by this instrument are joint and several.
7. All covenants, terms, conditions, and restrictions of this Easement are binding upon and inure to the benefit of Grantor and Grantor's heirs, devisees, personal representatives, successors in interest, and assigns, and the Donee, its successors in interest and assigns, and are to continue as a servitude in perpetuity running with the Property.
8. As used herein, any reference to "RCW" shall mean the Revised Code of Washington; any reference to "IRC" shall mean the Internal Revenue Code of 1986 as amended; and any references to such sections thereof shall also include any amendments thereto.
9. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties. Each counterpart shall be deemed an original as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
10. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
11. No term or provision of this Easement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Easement, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
12. The individuals signing below, if signing on behalf of any entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.

IN WITNESS WHEREOF, this the undersigned Grantor has executed this instrument
on 10/14/03.

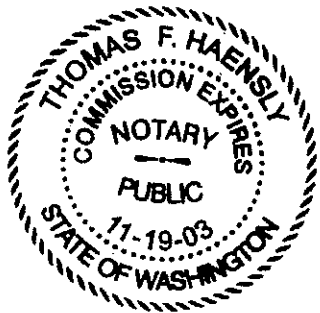
Grantor:

Arthur R. Kruckeberg
ARTHUR R. KRUCKEBERG

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 14th day of Oct., 2003, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Arthur R. Kruckeberg, known to me to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he signed the said instrument for himself as his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.



Thomas F. Haensly
Notary Public for the State of Washington, residing
at: Shoreline, WA
My commission expires: Nov. 19, 2003
Print Name: Thomas F. Haensly

ACCEPTANCE BY DONEE

The E.B. Dunn Historic Garden Trust does hereby accept the above Deed of Conservation Easement.

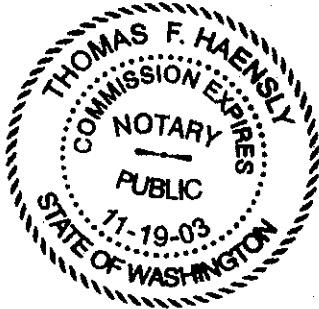
E.B. DUNN HISTORIC GARDEN TRUST, Donee

By: Susan Dunn
Susan Dunn, President

By: Genie Higgins
Genie Higgins, Secretary

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Susan Dunn is the person who appeared before me, known to me to be the President of the E.B. Dunn Historic Garden Trust, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act of said corporation, for the uses and purposes mentioned in the instrument, and on oath stated that she was authorized to execute said instrument.



Dated: Oct 14, 2003

Thomas F. Haensly

Notary Public for the State of Washington, residing
at: Shoreline, WA

My commission expires: Nov. 19, 2003

Print Name: Thomas F. Haensly

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Genie Higgins is the person who appeared before me, known to me to be the Secretary of the E.B. Dunn Historic Garden Trust, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act of said corporation, for the uses and purposes mentioned in the instrument, and on oath stated that she was authorized to execute said instrument.



Dated: 10-15-03

Christie Havens

Notary Public for the State of Washington, residing
at: Shoreline, WA

My commission expires: Nov. 19, 2003

Print Name: Thomas F. Haensly

ACKNOWLEDGMENT BY CASCADE LAND CONSERVANCY (Back-Up Grantee)

The Cascade Land Conservancy hereby acknowledges the terms and conditions of this Easement and its agreement to assume this Easement if certain conditions for assignment are met as provided in Subparagraph D(1) of Article XII herein.

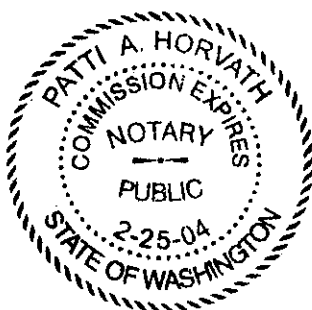
CASCADE LAND CONSERVANCY,
Back-Up Grantee

By: [Signature]
Gene Duvernoy, President

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Gene Duvernoy is the person who appeared before me, known to me to be the President of the Cascade Land Conservancy, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act of said corporation, for the uses and purposes mentioned in the instrument, and on oath stated that he was authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.



Dated: 10/14/03
Patti A. Horvath
PATTI A. HORVATH
[PRINT NAME]

NOTARY PUBLIC for the State of Washington,
residing at Kitapo County
My appointment expires 2-25-04

EXHIBIT A -- LEGAL DESCRIPTION

Parcel 1 - S $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$, less the W 270 feet thereof, situated in Sec. 1, Township 26 N, Range 3 E, W.M.

Parcel 2 - W 270 feet of S $\frac{1}{2}$ of NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$, less N 176.47 feet thereof, and less County Road, situated in Sec. 1, Township 26 N, Range 3 E, W.M.

Tax parcel numbers and general description of parcels:

Parcel 1 - 012603-9378-01 [This 2.94 acre parcel is the lower, easterly portion of the Property and is referred to in the Easement and noted on the site plan as the "Conserved Parcel".]

Parcel 2 - 012603-9219-04 [This 0.86 acre parcel is the smaller, westerly portion of the Property and contains the residence and other improvements; this parcel is referred to in the Easement and noted on the site plan as the "Developed Parcel."]

EXHIBIT B

[copy of site plan attached following this cover page]

AKJL_021D3==Krukeberg Easement Final.wpd

15th Avenue NW

EXHIBIT B

Kruckeberg Botanic Garden
Site Plan

scale: 1 in = 40 ft

--- ALLOWABLE RESIDENTIAL
FOOTPRINT (NTS)

